

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. PURPOSE AND JURISDICTION

A. This Agreement is entered into by the Louisiana Department of Environmental Quality (LDEQ) and the United States Environmental Protection Agency (U.S. EPA) Office of Civil Rights (OCR). This Agreement resolves certain issues raised in complaints (noted below in Section II.A.) filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7.

B. Title VI of the Civil Rights Act of 1964 prohibits agencies and other entities that receive federal financial assistance from conducting their programs or activities in a manner that discriminates on the basis of race, color, or national origin. LDEQ is a recipient of federal financial assistance from the U.S. EPA and is subject to the provisions of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.

C. LDEQ is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7. The activities detailed in Section IV of this Agreement, which LDEQ has voluntarily agreed to undertake and implement, are in furtherance of this commitment. The signatories to this document have the authority to enter into this Agreement for purposes of carrying out the activities listed in the following paragraphs.

D. This Agreement is entered into by the U.S. EPA pursuant to the authority granted to it under Title VI and U.S. EPA regulations at 40 C.F.R. Part 7, to investigate administrative complaints alleging discrimination by recipients of federal financial assistance from U.S. EPA, and to seek to resolve such complaints using voluntary, non-adversarial means. LDEQ has the authority to enter into this agreement pursuant to the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq.

II. BACKGROUND

A. A number of complaints have been filed with U.S. EPA alleging violations of Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations at 40 C.F.R. Part 7 by

LDEQ, in the administration of its permitting, public participation and enforcement programs. Of these complaints, three remain pending with U.S. EPA:

1. File No. 03R-96-R6 (filed by the Oakville Community Action Group). This complaint includes allegations of denial of public participation in agency processes, adverse impact from the Industrial Pipe facility operations, failure by LDEQ to enforce its regulations, and inadequate responses by LDEQ to citizen complaints about facility operations;
2. File No. 07R-98-R6 (filed by the Tulane Environmental Law Clinic on behalf of the Northern Baton Rouge Environmental Association and the Louisiana Environmental Action Network. This complaint includes allegations of discriminatory statewide impact resulting from permitting without taking cumulative effects into consideration, discrimination from the failure of LDEQ and its predecessor agencies to take multiple sources and/or pollutants into account in permitting, LDEQ's denial of public participation, abusive behavior and mistreatment of African Americans by LDEQ employees, failure to enforce and inadequate responses to citizen complaints about facility;
3. File No. 04R-97-R6 (filed by Tulane Environmental Law Clinic on behalf of the St. James Citizens for Jobs & the Environment). This complaint includes allegations that LDEQ used methods of administering its programs throughout the Shintech permitting process that had the effect of discriminating against African Americans.

B. Since 1993, LDEQ's environmental programs have progressed with respect to its ability to respond to and address Title VI issues, as evidenced below through examples of relevant legislative and executive action and departmental policies and action. Additionally, Louisiana was one of the first states to begin an environmental justice outreach program. This program has enhanced citizen participation in low-income and minority areas adjacent to industry and has included the establishment of Environmental Justice Panels, now known as Community-Industry Panels. Examples of progress including the enactment of various statutory provisions are:

1. La. R.S. 30:2011(D)(5) enacted in 1993, required public fact-finding hearings to investigate environmental equity issues and production of a report with recommendations, all of which LDEQ timely completed.
2. La. R.S. 30:2018 mandates that the permit applicant on significant permits submit an environmental assessment statement and that LDEQ may provide for a public hearing on the statement and shall provide for said hearing if one is requested.
3. La. R.S. 40:1300.171 and 1300.172 were recently added to the body of environmental law by Act 666 of 2003 (effective August 15, 2003), creating an Environmental Health Surveillance System (EHSS). The general purpose of this system is to establish an ongoing surveillance of the environmental exposures and diseases affecting the citizens of the state with particular focus on prevalence and determinants of chronic diseases. EHSS allows for tracking and evaluation of chronic disease in terms of environmental

exposures. Additionally, EHSS allows for assessing the impact of environmental contaminants on the human body and provide information for the development of preventive strategies.

LDEQ, together with the Department of Health and Hospitals (DHH), is charged under Act 666 with creating a working group of technical experts to prepare and submit a report to DHH and appropriate legislative committees, regarding EHSS. Accordingly, a technical working group was established and an initial report, dated March 15, 2004, was submitted to the Secretary of DHH and to the appropriate committees.

Prior to the March 15, 2004 report, Louisiana, through DHH/OPH, was one of ten states selected and awarded approximately \$1 million by the Centers for Disease Control & Prevention, over the next three years; this award will be used to fund a pilot project to support the development of a national public health tracking network. At the end of the three-year cooperative agreement, DHH/OPH, in consultation with LDEQ, will prepare a second report that will address Legislative Act 666 of the 2003 Regular Session regarding the feasibility of developing an environmental health surveillance system in Louisiana.

4. Executive Order MJF 98-01, as amended, established the Mississippi River Corridor Task Force. This order mandated a comprehensive investigation and development of recommendations (including human health, environmental, and economic development) regarding the most efficient and effective means to obtain and address public comment on future proposals for developing expansion projects, all of which LDEQ timely completed. LDEQ timely submitted a comprehensive report on its findings.
5. Development of power point presentations, list servers, public notices via the internet, and a public hearing survey are new and innovative component parts of LDEQ's continuing and progressive plan to provide more and better service to the public. Additionally, to assist in accomplishing this plan, LDEQ has established a dedicated Public Participation Group in the Office of Environmental Services. The four new components are described as follows:
 - a. The power point presentation is organized by LDEQ to present significant information during a public hearing pertaining to a permit action. The presentation covers the rules governing the hearing and contact points and locations where the public can view permit applications and other pertinent information.
 - b. The list server is developed through the Office of Electronic Services, Louisiana Division of Administration, and it allows members of the public to receive public notices of LDEQ permits by e-mail. Members of the public can subscribe on their own to the various parish and/or statewide mailing lists. They may receive electronic copies of LDEQ public notices for proposed or draft permitting actions in the various parishes, or they may elect to receive all public notices using the statewide lists.

- c. Public notices may be reviewed by members of the public on the LDEQ website.
- d. A public hearing survey is distributed by LDEQ at each public hearing pertaining to a permit action. This survey allows the public an opportunity to comment on the public hearing process. The survey provides LDEQ with information that can be used to improve the quality of its hearings and, through improved methods of outreach, better serve the community.

C. In response to the Title VI complaints accepted for investigation between 1996 and 1998 and listed in Section II.A., U.S. EPA has undertaken an investigation of LDEQ's compliance with Title VI and U.S. EPA's implementing regulations at 40 C.F.R. Part 7. This Agreement between U.S. EPA and LDEQ has been entered into prior to any finding of violation from that investigation, and addresses allegations of discrimination resulting from the administration of LDEQ's permitting and public participation process (denial of public participation), adverse impact from facility operations, inadequate responses to citizen complaints and LDEQ's alleged failure to enforce and to take multiple sources and/or pollutants into account in permitting. (File Nos. 03R-96-R6, 07R-98-R6, 04R-97-R6).

III. LDEQ and INDUSTRIAL PIPE, INC. SETTLEMENT OF SOLID WASTE PERMITS (P-0367 and P-021R1)

During negotiation of this Settlement Agreement, LDEQ and Industrial Pipe, Inc. settled appealed conditions in the solid waste permits P-0367 for the Construction and Demolition (C&D) Type III Landfill, and P-0261R1 for the Type III Separation facility. A number of the issues addressed in the LDEQ and Industrial Pipe, Inc. permit appeal resolution were also identified in the Title VI Administrative Complaint No. (3R-96-R6), filed by the Oakville Community Action Group (Oakville). While U.S. EPA is not a party to LDEQ and Industrial Pipe, Inc. permit appeal resolution, the terms of the reissued permits with revised conditions are applicable requirements of the permits and sufficiently address some of the issues raised by the Oakville complainants. Further, other issues raised by the Oakville complaint and not addressed by the LDEQ-Industrial Pipe, Inc. permit appeal resolution have otherwise been resolved. Therefore, based upon these considerations, OCR will not continue any further proceedings regarding the Oakville complaint.

IV. SPECIFIC COMMITMENTS

A. LDEQ commits to maintain, improve, monitor and revise, as necessary, a comprehensive public participation program that addresses environmental justice concerns as well as the allegations contained in the referenced Title VI complaints. LDEQ agrees to undertake the following specific commitments, and to submit all plans or proposals specified to U.S. EPA:

1. Not later than 270 days from the effective date of this Agreement, LDEQ agrees to enter into a Memorandum of Agreement with U.S. EPA - Region VI, to collaborate and jointly share information relating to the further study and consideration, whenever

possible, of cumulative impacts in areas including but not limited to permitting activities, rules, and policies of both agencies. U.S. EPA and LDEQ agree to coordinate where appropriate, and whenever feasible on research and data collecting activities relating to the study of cumulative risks.

2. Within one year from the effective date of this Agreement, LDEQ commits to:
 - a. Establish a grievance procedure pursuant to 40 C.F.R. §7.90, create and post a notice of nondiscrimination pursuant to 40 C.F.R. §7.95, and identify a responsible employee to coordinate LDEQ compliance with 40 C.F.R. Part 7 pursuant to 40 C.F.R. §§ 7.85(g) and 7.95(a).
 - b. Re-focus the existing Community-Industry Relations function within LDEQ that, among other things, is responsible for identifying communities for targeted outreach and assistance. The Community-Industry Relations Group will dialogue with residents of communities and assist them in understanding and participating in the environmental regulatory process.
 - c. Establish a work plan for the Ombudsman within the LDEQ Office of the Secretary to clearly define the manner in which LDEQ will receive and investigate complaints involving public participation and environmental justice issues. Through the collection of data and findings, the Ombudsman will identify and bring to the attention of the LDEQ Secretary systemic problems, and the need for system changes.
 - d. Continue to schedule and hold public hearings without request whenever LDEQ is aware of significant public interest in a proposed agency action.
 - e. Expand and improve the LDEQ library to include more information on public participation and environmental justice. This will afford LDEQ staff and the general public with greater reference and study materials in these areas.
 - f. Reevaluate and/or develop and implement the following:
 - i. Standard operating procedures for addressing allegations of environmental injustice.
 - ii. Standard operating procedures for notifying parish governing authorities of permit applications received. Said authorities in turn are responsible for notifying each municipality affected by the applications.
 - iii. Standard operating procedures for development and issuance of public notices of LDEQ permit actions.
 - iv. Standard operating procedures for responding to complaints based on Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000d to 2007-d)

and EPA's regulations found at 40 C.F.R. Part 7.

- v. Standard operating procedures for assisting in the establishment and conducting of a Community-Industry Panel.
 - vi. Standard operating procedures for investigating environmental complaints. To ensure that environmental complaint investigations are conducted in an appropriate manner, LDEQ staff will use these procedures.
 - vii. Standard operating procedures for conducting public hearings.
 - g. Reevaluate the implementation of the provisions of La. R.S. 30:2018, which requires the applicant to submit an environmental assessment statement as part of the permit application when applying for certain designated permits. Simultaneously with the submission of the statement to LDEQ, the applicant is required to submit copies of the statement to the local governmental authority and designated public library where the facility is located, thus giving the public greater opportunity to review the permit application and/or participate in the decision-making process. Confirmation procedures will be implemented to assure compliance by the applicant with this portion of the statute.
3. Within two years of the effective date of this Agreement, LDEQ commits to:
- a. Facilitate the establishment of Community-Industry Panels in disadvantaged communities that serve as mechanisms whereby community residents and industry officials can meet voluntarily to discuss and resolve issues of concern.
 - b. Work with U.S. EPA Region 6 on Environmental Justice related issues in Louisiana.
 - c. Consider any guidance offered to it by U.S. EPA and the National Environmental Justice Advisory Council.
 - d. With U.S. EPA's assistance and funding, provide training to LDEQ officials and employees to enhance their skills in identifying stakeholders, ensuring stakeholder involvement throughout agency processes, using appropriate communications techniques, and creating effective forums for dialogue.
 - e. Work to identify and implement cultural diversity and/or sensitivity training opportunities for employees having contact with the public.
4. Within three years of the effective date of this Agreement, LDEQ commits to:
- a. Conduct internal reviews and prepare annual summaries on its public participation activities in the permitting process to evaluate its public participation practices.

- b. Use the department's central data management system to provide the public with appropriate and timely facility level information.
- c. Develop and implement a self-assessment procedure for evaluating LDEQ's response to environmental complaints. In connection with this assessment, LDEQ will utilize evaluation tools or assessment procedures to measure its performance in responding to environmental complaints lodged by citizens.

B. LDEQ agrees to provide any documents described in Section IV., by certified mail to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of completion by LDEQ of each.

V. EFFECT OF AGREEMENT

A. It is understood that this Agreement does not constitute a finding by the U.S. EPA of violations of Title VI or 40 C.F.R. Part 7 regarding permitting and public participation matters raised in File Nos. 03R-96-R6, 07R-98-R6, and 04R-97-R6 described in Section II.A. Moreover, LDEQ unequivocally denies that it has committed any intentional discrimination or caused any disparate impact in conducting its programs or activities that would constitute a violation of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.

B. In consideration of LDEQ's implementation of, and adherence to, the provisions of this Agreement described in Section III and IV, the U.S. EPA Office of Civil Rights will not continue any further proceedings with respect to the permitting and public participation matters referred to in Section II.A. U.S. EPA retains its right, however, to accept and investigate any further Title VI complaints alleging discriminatory acts generally or specifically with respect to new or resumed operations at any facility referred to in Section II.A.

1. If the EPA Office of Civil Rights determines that LDEQ has not satisfied a term or condition of this Agreement, or that a material change to LDEQ's programs or authorities affects LDEQ's compliance with Title VI and 40 C.F.R. Part 7, the EPA Office of Civil Rights shall promptly notify LDEQ of that determination in writing. OCR may make this determination in the course of any future review to determine LDEQ's compliance with Title VI and 40 C.F.R. Part 7, which may include compliance with matters addressed in Section IV.
2. The notification under Paragraph B.1 shall include a statement of the facts and circumstances upon which the EPA Office of Civil Rights has relied in making its determination, and the EPA Office of Civil Rights shall provide an opportunity to resolve any disputed issue(s) by informal means.

C. With respect to any assessment, evaluation and/or report (as applicable) described in Section IV.A. that has been submitted by LDEQ pursuant to Section IV.B., if the Office of Civil Rights determines that the submission does not satisfy the requirements described in Section IV.A. (as

applicable), or if the submission lacks sufficient detail for U.S. EPA to make that determination, U.S. EPA shall provide the written notification required by Paragraph V.B.1. and V. B.2. within 90 days of U.S. EPA's receipt of the submission. If notification under Section V.B.1. is not provided by U.S. EPA within 90 days of U.S. EPA's receipt of the final submission required by Paragraph IV.A., the Agreement shall be considered completed and subject to the provisions of Paragraph V.F., by written notice to LDEQ. U.S. EPA may obtain an additional 90 days in which to provide the notification under Paragraph V.B.1. for the final submission required by Section IV.A.

D. If compliance cannot be assured by informal means, U.S. EPA may use any other means authorized by law, including termination of this Agreement. Except as expressly provided in this Agreement, U.S. EPA retains all rights and authorities to ensure compliance with Title VI of the Civil Rights Act and 40 C.F.R. Part 7, nor is there any waiver, express or implied, of U.S. EPA's right to enforce any provision of this Agreement.

E. If either party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to LDEQ's program or authorities, or due to satisfaction or performance of obligations required by this Agreement, or for other good cause, the party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification, and the substance of the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by LDEQ and the EPA Office of Civil Rights.

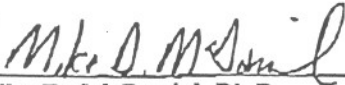
F. This Agreement constitutes the entire Agreement between LDEQ and the EPA Office of Civil Rights regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by LDEQ and the U.S. EPA Office of Civil Rights in accordance with the provisions of Section V.E.

G. This Agreement does not affect LDEQ's continuing responsibility to comply with Title VI of the Civil Rights Act of 1964, nor does it affect U.S. EPA's investigation of any allegations in Title VI complaints other than those listed in Section II.A., nor does it address any matter not specifically covered by the terms of this Agreement.

H. This Agreement is a public document. A copy of this Agreement and any information contained in it may be made available to any person by LDEQ or the EPA Office of Civil Rights on request under the Freedom of Information Act or otherwise.

I. The effective date of this Agreement is the date on which U.S. EPA formally dismisses the complaints identified in Section II.A.; provided that U.S. EPA dismisses the complaints within 90 days from the date of the last signature below. If U.S. EPA does not formally dismiss the complaints within the prescribed time period, this Agreement is null and void.

On behalf of the Louisiana Department of Environmental Quality,



Mike D. McDaniel, Ph.D.
Secretary

1-18-05
Date

On behalf of the U.S. Environmental Protection Agency,



Karen Higginbotham, Director
Office of Civil Rights

27 Dec 2004
Date